



California's Protection & Advocacy System

Disability Discrimination by the California Department of Rehabilitation¹

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Is it illegal discrimination for the Department of Rehabilitation (DOR) to discriminate against me based on my disability?

Yes. Under Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, it is illegal for a public entity or a recipient of federal financial assistance, such as the DOR, to discriminate against an individual on the basis of disability.

Examples of discrimination might include:

- Denial of services by the DOR based on stereotypes about a particular disability. For example, a DOR counselor cannot deny paying for law school solely because they do not believe that a person with a visual impairment would make a good lawyer;
- Failure to provide services or benefits in locations accessible to people with mobility impairments;
- Failure to make reasonable modifications in policies, practices and procedures necessary to allow applicants and clients with

¹ It is also illegal to discriminate on the basis of race, national origin, ethnicity, religion and gender under the Civil Rights Act of 1964. Also, state law prohibits discrimination based on familial status and sexual orientation. However, this fact sheet only covers discrimination based on disability.

disabilities access to DOR services. For example, refusing to consider longer timelines to complete needed coursework or modification to the testing protocols, if needed due to an individual's disability;

- Failure to provide effective communication, including auxiliary aids and services. For example, not providing electronic format for an individual with a visual impairment or a sign language interpreter or text communication for a client who is deaf.

Further, DOR cannot contract with other providers who discriminate, including failing to provide services in accessible locations or modifications to their rules, policies or procedures to ensure access.

Can DOR make decisions about whether I am eligible for services and what services to provide based on my disability?

Yes, to the extent allowed by law. DOR provides services to people with disabilities to help them go back to work, obtain work for the first time, train for a new career, and to keep current employment. DOR bases eligibility determinations and services on the requirements set forth in the law – under the federal Rehabilitation Act and the California's vocational rehabilitation statute and regulations. The law requires that DOR make determinations based on an applicant/client's abilities and disabilities, as well as his/her preferences.

For example, order of selection regulations allow DOR, when state funding is limited, to prioritize services to certain individuals with disabilities based upon the severity and type of disability. Also, under its statutory and regulatory framework, DOR determines whether an individual is eligible for vocational rehabilitation services based on the individual's physical or mental impairment, and whether that impairment constitutes a barrier to his or her employment. In addition, in order to be determined eligible for services the individual must show that they have a need for vocational rehabilitation services, and that they can benefit from DOR services.

Once an individual is determined eligible for services, the individual is responsible for choosing their employment goal and services based on

their interests, abilities and “informed choice.” For more information on informed choice see CAP Fact Sheet

<http://www.disabilityrightsca.org/pubs/554001.pdf>

The DOR may determine in the future that an individual’s services should be changed or reduced based on inadequate progress in achieving his/her vocational goal. However, the type of disability a client has should not be a determining factor in eligibility or provision of services on its own.

While, generally, public entities cannot deny services based on disability, federal regulations may allow a governmental entity, like DOR, to exclude or include individuals with disabilities in their program. 34 Code of Federal Regulations (C.F.R.) §104.4(c). This allows DOR to provide or deny services based on an individual’s disability, if doing so is in compliance with the program’s laws and regulations. Doing so does not violate the discrimination laws -- the ADA or Section 504.

What can a client do if they disagree with their DOR counselor’s decision?

As discussed above, many of the decisions that DOR makes are not necessarily illegal discrimination. Instead, they might constitute a disagreement or dispute between an applicant/client and DOR. For example, a disagreement might be about whether or not a particular employment goal is achievable or a specific service or coursework is necessary. These types of disputes are best dealt with through DOR’s dispute process, which may include requesting review by a DOR supervisor, District Administrator review, mediation or fair hearing. For more information on resolving disputes with DOR, see the DRC CAP fact sheet on DOR services beginning at Question 31 at

<http://www.disabilityrightsca.org/pubs/540101.pdf>.

I feel that I have been illegally discriminated against by DOR. Where can I file complaints?

If you have been discriminated against by DOR, you can file an administrative complaint under the ADA and Section 504. You only have 180 days from the date of the last discriminatory act to file an

administrative complaint. First, you can file a complaint with DOR's Office of Civil Rights (OCR) by contacting them at:

Department of Rehabilitation
Office of Civil Rights
721 Capitol Mall
Sacramento, CA 95814
(916) 558-5850 (Phone)
(916) 558-5852 (TTY)

You can also file a complaint with the U.S. Department of Education's (DOE's) OCR by filling out the form at <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html> or by contacting that at:

U.S. Department of Education
Office for Civil Rights
50 Beale Street, Ste. 7200
San Francisco, CA 94105
(415) 486-5555 (Phone)
(877) 521-2172 (TTY)

Also, you can file a complaint with the U.S. Department of Justice (DOJ) by calling (800) 514-0301 (voice) or (800) 514-0383 (TTY). DOJ only has jurisdiction over the ADA and not Section 504.

Is there any way I can file a complaint if I was discriminated against by DOR more than 180 days ago?

A person can file a complaint under California's Unruh Civil Act ("the Unruh Act")² with California's Department of Fair Employment and Housing

² A violation of the ADA is a violation of the Unruh Act. See Part 2 of the California Civil Code § 51(f).

(DFEH) within one year of the most recent discriminatory act. You may visit the DFEH online at www.dfeh.ca.gov or call them at (800) 884-1684 to schedule an appointment to file a complaint.

Can I file a lawsuit against DOR?

Yes, a discrimination lawsuit can be filed in either federal or state court within two years from the most recent discriminatory act. Suits can be brought under the ADA, Section 504 or state law. You do not have to file complaints with the Offices of Civil Rights, DOJ, or DFEH in order to file a lawsuit in state or federal court. If you are interested in such an action, you will most likely need to consult with and hire an attorney to represent you. You may check with your CAP advocate by calling (800) 776-5746 to see if he/she has an attorney referral list.

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.